

Appeal from a decision by the Acting Area Manager, Billings Resource Area, Bureau of Land Management, cancelling a Private Maintenance and Care Agreement for two wild horses with Freeze Mark Nos. 86455076-HF1 AAAAAD and 91455085-HF1 AAAABL.

Affirmed.

1. Wild Free-Roaming Horses and Burros Act

The Private Maintenance and Care Agreement and 43 CFR 4750.4-1(e) require financially responsible adopters to assure the proper care and treatment of horses covered by the Private Maintenance and Care Agreement. When the person providing care for an animal being adopted for the adopting party informs BLM that the person adopting the animal has not paid care and maintenance bills, and that the person providing care will no longer care for the animal, BLM is justified in cancelling the Agreement and repossessing the animal.

APPEARANCES: Mark L. Williams, pro se, and Joey R. Deeg, Power of Attorney, on behalf of Mark L. Williams.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Mark L. Williams and Joey R. Deeg 1/ appeal an August 28, 1992, decision of the Acting Area Manager, Billings Resource Area, Bureau of Land Management (BLM), cancelling Williams' Private Maintenance and Care Agreement (Agreement) for two wild horses identified by Freeze Mark Nos. 86455076-HF1 AAAAAD and 91455085-HF1 AAAABL.

On April 16, 1991, Williams filed an application to adopt wild horses pursuant to the Wild Free-Roaming Horses and Burros Act of December 15,

1/ On Apr. 25, 1991, Williams appointed Deeg as his attorney in fact "[t]o exercise or perform any act, power, duty, right, or obligation whatsoever that I now have or may hereafter acquire, arising from, or relating to the adoption of a wild horse or burro." On May 7, 1992, Williams executed a similar document again appointing Deeg as his attorney in fact, effective until Apr. 24, 1993.

1971, as amended, 16 U.S.C. §§ 1331-1340 (1988). The application stated that Joey Deeg would "select or care for the animals requested." On April 27, 1991, Joey Deeg signed an Agreement for two wild horses from the Pryor Mountain wild horse range. Deeg then transferred the care of these horses to Pattie Herring of Lovell, Wyoming.

On April 22, 1992, Herring wrote a letter to BLM, stating that she had heard nothing from Mr. Williams regarding the care of the mare and foal, she had received no money for the care of the animals for 10 months, and that \$861 was owing for 287 days of care at \$3 per day. She then asked BLM how it wanted her to proceed.

BLM then wrote to Williams on April 24, 1992, enclosing a copy of Herring's April 22 letter. In its letter BLM referred to 43 CFR 4750.4-1(e) which provides that "adopters are financially responsible for the proper care and treatment of all wild horses and burros covered by the agreement." Williams was directed to resolve the matter promptly so that no further action would be required.

Deeg responded in a letter dated April 27, 1992, stating that his agreement with Herring was to pay \$100 for 6 months pasture, and that he had paid this amount in advance by check. 2/ Deeg also charges Herring with inhumane treatment of a horse not covered by the Agreement and other violations of the Wild Free-Roaming Horses and Burros Act. 3/

By letter dated April 29, 1992, to Herring, Deeg's attorney notified Herring that she had 3 days from receipt to arrange for transfer of the horses to Deeg, or he would initiate replevin action on behalf of Deeg. On June 23, 1992, Deeg wrote to Herring offering to pay \$500 in settlement if Herring would release her lien and arranging for Deeg to assume possession of the horses.

By letter dated August 12, 1992, Herring's attorney, Royal, advised BLM that on May 7, 1992, Herring had filed a notice of pasture and feed lien in accordance with Wyoming Statute 29-7-101. Royal expressed Herring's desire to return the horses to BLM and file a claim with BLM for payment. Royal explained that this would by-pass the need to deal with Williams who, according to Royal, had no concern for the maintenance of the horses. Herring wrote to BLM again on August 28, 1992, stating that she had received no compensation for the care and maintenance of the two horses since July 1991, and that she would no longer care for the horses.

BLM responded to Herring's August 28 letter by issuing its decision of August 28, 1992, cancelling the Agreement. BLM noted that under the

2/ The case file contains copies of two cancelled checks from Deeg to Herring. The first (\$100) was written on April 27, 1991, and the second (\$125) was written on June 29, 1991.

3/ On May 14, 1992, BLM informed Deeg that his allegation of inhumane treatment had been forwarded to the Humane Society for investigation.

Agreement, the adopters must be financially responsible for providing proper care, and the adopters cannot transfer animals to another location or to the care of another individual for more than 30 days without prior BLM approval. Based upon information that Herring had cared for the horses for 10 months without pay, and her notice that she would no longer provide care for the horses, and Williams' failure to comply with the terms of the adoption, BLM terminated the adoption agreement and assumed responsibility for the horses pursuant to 43 CFR 4770.2(b). ^{4/}

On August 31, 1992, BLM advised Herring that it had assumed financial responsibility for the horses. BLM explained that it would maintain the animals through the legal waiting periods and then initiate action to reassign the animals in accordance with the regulations. BLM offered Herring \$1.50 per day for maintenance of the horses, rather than move them to another location. On September 3, 1992, Herring advised BLM that this arrangement was satisfactory.

Williams and Deeg filed their notice of appeal with BLM on October 5, 1992, and requested immediate possession of the horses during the appeal process. On October 1, 1992, BLM denied Williams' request for immediate possession of the horses, stating that the horses would remain in BLM possession unless and until a decision from the Board affirmed his appeal and all expenses and claims for care and maintenance were paid.

In their statement of reasons, Williams and Deeg contend that Herring accepted Deeg's offer to pay \$100 for 6 months' pasture rent for the two horses. Deeg states that he paid Herring \$225 and purchased \$25 worth of grass and salt blocks, with a total expenditure for the year for the care and maintenance of the horses of \$250. Deeg contends that this amount is high, claiming that two ranchers in the area would charge \$144 and \$180 per year for pasture rent for a mare and foal. Deeg asserts that he asked Herring repeatedly to release the horses to him, but she would not cooperate. Instead, she referred him to BLM, and BLM sent him a copy of its April 24, 1992, letter to Williams regarding Herring's claim for \$861 care and maintenance for the horses. Williams and Deeg assert that BLM is attempting to discredit Deeg because he has other actions pending against BLM.

^{4/} This regulation was published on Jan. 9, 1991 (56 FR 876), effective on that date, to allow immediate repossession of adopted wild-free roaming horses and burros, and cancellation of Private Maintenance and Care Agreements when abuse or neglect are deemed to endanger their life or health. Following the public comment period, BLM adopted the interim final rule which was published in the Federal Register on Feb. 16, 1994 (59 FR 7642-43). In the preamble to the final rulemaking BLM explained that the rule does not limit the right of appeal of persons whose Agreements are revoked. BLM notes that it merely allows animals to be repossessed for their protection until issues raised on appeal can be considered. 59 FR 7643 (Feb. 16, 1994).

[1] The Wild Free-Roaming Horses and Burros Act of 1971, as amended, 16 U.S.C. § 1333(b)(2)(B) (1988), authorizes the Secretary of the Interior to place wild horses with qualified applicants who can assure humane treatment and care. See 43 CFR Subpart 4750. The title to horses placed in private care remains with the Government, and BLM does not issue a Certificate of Title for a minimum period of 1 year following execution of the Agreement and placement of the animal. 16 U.S.C. § 1333(c) (1988); 43 CFR 4750.4 and 4750.5. The Certificate of Title may only be issued after the 1-year period has passed, the adopter applies for title, and transfer is approved by the proper BLM officer. 43 CFR 4750.5(a) and (b). Under 43 CFR 4760.1(a), the adopter must comply with the Agreement and the regulations to qualify.

The dispute between Deeg and Herring regarding the cost of care and maintenance is of no consequence to BLM. BLM's primary concern is the welfare of the horses, and, for that reason, the Agreement and 43 CFR 4750.4-1(e) require financially responsible adopters to assure proper care and treatment of all wild horses and burros covered by the Agreement. 5/ It was proper for BLM to cancel Williams' Agreement and repossess the horses after it received notice from Herring that she would no longer provide care because the bills for the care and maintenance had not been paid. BLM's action was triggered by evidence that the well-being of the horses was in jeopardy.

Under 43 CFR 4760.1(d), BLM may require, as a condition for continuation of the Agreement, that an adopter take specific corrective actions if the authorized officer determines that an animal is not receiving proper care, or the animal is being maintained in an unsatisfactory manner. In its April 24, 1992, letter BLM informed Williams of Herring's claim and gave him an opportunity to take corrective action. When he did not, Herring stated that she would no longer care for the horses. Under 43 CFR 4770.2(b) an adopter's failure to comply with the terms and conditions of the Agreement may result in the cancellation of the Agreement and repossession of the animal. See Freddie R. Mason, 126 IBLA 28, 30 (1993); Vickie L. Fontenot, 121 IBLA 47, 50 (1991); Grant F. Morey, 108 IBLA 354, 356 (1989).

The Private Maintenance and Care Agreement (Form 4710-9) specifically prohibits "[t]reating a wild horse or burro inhumanely." See also 43 CFR 4770.1(f). Regulation 43 CFR 4700.0-5(f) defines "inhumane treatment" as "any intentional or negligent action or failure to act that causes stress, injury, or undue suffering to a wild horse or burro and is not compatible with animal husbandry practices accepted in the veterinary community." The Board has upheld BLM's decision to cancel the Agreement and repossess the horses pursuant to these terms when there is evidence that the adopter

5/ In the preamble to the final rulemaking BLM stated that 43 CFR 4750.4-1 of the proposed rulemaking had been amended "to make it clear that it is the adopter's financial responsibility to care for animals covered by the Private Maintenance and Care Agreement." 51 FR 4710, 4713 (Mar. 3, 1986).

failed to provide feed, water, and care. See Freddie R. Mason, *supra*; Grant F. Morey, *supra*; Dennis Turnipseed, 66 IBLA 63 (1982). Williams had expressed no interest in caring for the horses. Herring informed BLM that she would no longer care for them. The fact that the animals would no longer be cared for can be construed as "negligent action" on Williams' part within the meaning of 43 CFR 4700.0-5(f). BLM had full authority to cancel the Agreement and repossess the horses and acted within that authority.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

I concur:

John H. Kelly
Administrative Judge